

OIL AND GAS BOARD  
OF REVIEW

JUL 13 1989

OIL AND GAS BOARD OF REVIEW

DIVISION OF OIL AND GAS

DEPARTMENT OF NATURAL RESOURCES, STATE OF OHIO

APPEAL NO. 329  
CHIEF'S ORDER 88-1265

ATLANTIC ENERGY (USA) CORP.  
516 Dime Bank Bldg.  
Marietta, Ohio 45750

APPELLANT

VS.

J. MICHAEL BIDDISON, CHIEF  
Division of Oil and Gas  
Ohio Department of Natural Resources  
Building A, Fountain Square  
Columbus, Ohio 44224

APPELLEE

APPEARANCES:

For Appellant:

Rustin J. Funk, Attorney at Law  
Addison, Funk & Nuzum  
200 St. Clair Building, Box 747  
Marietta, Ohio 45750

For Appellee:

Anthony J. Celebrezze, Jr.  
Attorney General of Ohio  
BY: Lisa M. Finnegan  
Assistant Attorney General  
Division of Oil and Gas  
Building A, Fountain Square  
Columbus, Ohio 43224



### ENTRY

This matter came on for hearing before the Oil and Gas Board of Review on January 9, 1989 in the Conference Room, Building E, Department of Natural Resources, Fountain Square, Columbus, Ohio pursuant to a timely appeal by Atlantic Energy (USA) Corp (hereinafter Atlantic) of the Order of the Chief of the Division of Oil and Gas No. 88-1265.

### ISSUE

The question before the Board is whether the Chief's Order No. 88-1265 to Atlantic to revise its plat, plug back or plug and abandon the Poulton No. 3 well is lawful and reasonable? We conclude that it is.

### BACKGROUND

In January, 1979 the Division issued a permit to drill an oil and gas well to Viking Resources for the Poulton No. 3 well in Washington County, Ohio. This well (Permit No. 4480) was in fact drilled and completed in the Mississippian Berea Sandstone. The Ohio Administrative Code rules (Sec. 1501:9-1-04) require a drilling unit of not less than 20 acres and a well location not less than 300 feet from the unit or property boundary for a well drilled to the depth of the Poulton No. 3 (2,347 feet).

Nine years after the well was drilled, Mr. Eugene Huck, owner since 1982 of the property to the west of the Poulton No. 3 well, complained to the Division of Oil and Gas that the well had not been drilled as permitted and was closer to his property than

the minimum setback requirement of 300 feet. A subsequent investigation by the Division and a survey of the well location showed the well to be located 254 feet from the Huck property line (46 feet too close) and not at the permitted location. In 1987, Viking Resources had transferred the ownership of the well to Atlantic, filing a change of ownership form with the Division of Oil and Gas.

On August 10, 1988, the Chief of the Division of Oil and Gas issued Order 88-1265 requiring Atlantic:

A) to submit a revised plat showing the boundaries of the drilling unit with 300 foot set back spacing together with a lease from Mr. Eugene Huck, or

B) to plug back the well and produce from some reservoir less than 2,000 feet in depth, or

C) to plug and abandon the well and restore the well site. Atlantic appealed from this Order.

#### FINDING OF FACT AND CONCLUSIONS OF LAW

Based on the several hour-long hearing, testimony of the President of Atlantic, testimony of Mr. Hauk, testimony of Division of Oil and Gas personnel, submission of exhibits and stipulation of certain facts, the Board finds as follows:

1. The Poulton No. 3 well is in violation of the well spacing requirements.

2. Chief's Order 88-1265 properly and accurately addresses the options open to the Appellant to bring the well into compliance.

3. Atlantic had not been able to reach a mutually satisfactory lease agreement with Mr. Hauk which would allow it to submit a revised plat and lease as called for in option A of the Chief's Order.

4. There is no shallower produceable oil and gas reservoir to be exploited in the Poulton No. 3, in the opinion of the operator, Atlantic.

Consequently, the Order of the Chief is to be affirmed.

#### DISCUSSION

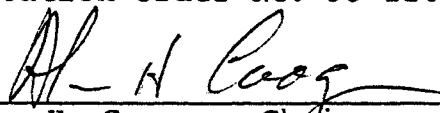
Atlantic, in argument before the Board and in its Post-Hearing Brief, urged the Board to look beyond the Chief's Order and to either grant the Appellant a variance from the requirements or to order a mandatory pooling of a sufficient number of Hauk acres to meet the spacing requirements. It may be an open question whether the mandatory pooling provisions of the law (Sec. 1509.27) can be applied to remedy spacing violations after a well has been drilled and produced, but the Board does not find it necessary to address the question. The Chief's Order does not permit or deny mandatory pooling. Furthermore, the Appellant, Atlantic, never applied for mandatory pooling or for an exception tract and never went through the steps usually required for an order of the Chief regarding mandatory pooling or

an exception tract.

Appellant, Atlantic, because of an error by its predecessor in title, appears to have uneconomic alternatives given the demands of Mr. Hauk. While it is in the power of the landowners and operator to resolve their problems, to provide a legal location and meet the first of the Chief's options, they have not been willing or able to do so. Their lack of agreement, however, does not negate the Order of the Chief.

ORDER


Therefore, the Board of Oil and Gas Review finds the Order of the Chief, No. 88-1265 to Atlantic Energy (USA) to have been lawful and reasonable and the Board **ORDERS** that Appeal No. 329 is hereby **DISMISSED** and that the Adjudication Order No. 88-1265 be and hereby is **AFFIRMED**.

  
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Alan H. Coogan, Chairman

  
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Robert H. Alexander

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John J. Carney

  
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Gail Ignatz-Hoover

  
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William G. Williams, Secretary

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Entry was sent the the following by certified mail, return receipt requested, this 13th day of July, 1989:

Rustin J. Funk  
Attorney at Law  
Addison, Funk & Nuzum  
200 St. Clair Building, Box 747  
Marietta, Ohio 45750

William G. Williams, Sec.  
William G. Williams, Secretary  
Oil and Gas Board of Review

I hereby certify that a true copy of the foregoing Entry was sent to the following by ordinary U.S. Mail, postage prepaid, this 13th day of July, 1989.

Lisa Finnegan  
Assistant Attorney General  
Division of Oil and Gas  
Building A, Fountain Square  
Columbus, Ohio 43224

William G. Williams, Sec.  
William G. Williams, Secretary  
Oil and Gas Board of Review